IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3455 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DIPAKBHAI BHIKHABHAI PATIL

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 3455 of 2004

MS BANNA S DUTTA for Petitioner No. 1

MS AC RAVAL, AGP for Respondent No. 1-3

RULE SERVED for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 12/08/2004

ORAL JUDGEMENT

By filing this petition, the petitioner-detenu has challenged his detention order dated 24-02-2004. By the said order, the petitioner is detained as a "bootlegger" under PASA. Along with the order of detention, petitioner is also served with the grounds of detention. In the grounds of detention, there is a reference about one criminal case pending against the petitioner. The said case is registered under the Bombay

Prohibition Act. In the grounds of detention, the detaining authority has also relied upon the statement of two secret witnesses and the authority has claimed privilege under Section 9 (2) of the Act and, therefore, the names of those two witnesses have not been disclosed. The aforesaid order of detention is challenged by the petitioner on various grounds.

2) Ms.Banna Dutta, learned advocate for the petitioner submitted that at the time of passing the detention order, the petitioner was already in judicial custody and the authority has not properly stated as to on what basis it has reached the conclusion that on presenting bail application, petitioner will be released on bail and will continue his activity and, therefore, subjective satisfaction arrived by the detaining authority stands vitiated.

3) Ms.Dutta has submitted that it cannot be said that the petitioner is a dangerous person and names of witnesses should not have been kept secret by claiming privilege under Section 9 (2) of the Act. It is submitted that before claiming privilege under Section 9 (2) of the Act, the authority has not tried to verify about the credentials and character of the detenu. She submitted that the privilege is claimed in a routine manner and, therefore, without any basis the authority has tried to withhold the names of witnesses and as a result of that the petitioner is denied the valuable right of making effective representation. To substantiate her say, Ms.Dutta has relied upon the decision of this Court rendered in the case of KISHOR NAGINBHAI PARMAR v. STATE OF GUJARAT, reported in 2000 (4) GLR 3236, wherein it is held that before claiming privilege under Section 9 (2) of the Act, proper exercise is required to be made for finding out antecedents of the detenu and there should be some credible material to justify the say that if the names of witnesses are disclosed it will be harmful to their life. Since in the instant case, said exercise has not been done, privilege claimed in this case is not genuine and proper.

4) Ms.Dutta, learned advocate for the petitioner submitted that there is only solitary case registered against the petitioner and considering the same, it cannot be said that the petitioner is a habitual offender. It is further submitted that considering the said case, it cannot be said that the petitioner has violated public order and at the most it can be said that law and order is violated by the petitioner. To substantiate her say, Ms.Dutta has relied upon the

judgement of this Court in Sandip Omprakash Gupta Vs. State of Gujarat and others, reported in 2004 (1) GLR 864, wherein this Court has observed that a solitary offence under the Bombay Prohibition Act was registered against the detenu and the authority relied on two other unregistered offences based on statements of certain witnesses and, therefore, a learned Single Judge of this Court held, on facts, that the detenu could have been dealt with under the ordinary criminal law. The order of detention passed therein, treating the petitioner as a bootlegger, is set aside. Since I am bound by the view taken by the learned Single Judge, in view of the aforesaid ground about solitary incident of a registered case under the Bombay Prohibition Act, which can be taken care under the criminal law, this petition is required to be allowed.

5) Ms.Raval, learned AGP, has stated that the petitioner is repeating this offence and in past also the petitioner was detained under PASA.

6) At this stage, learned advocate for the petitioner submitted that in case the petitioner is released on bail by the concerned Magistrate then he will not enter Amraiwadi area of Ahmedabad city upto 30th November, 2004. This statement is recorded and it is for the police authority to monitor the compliance of this statement. Release of petitioner in this detention case should not be treated as a favourable ground for releasing him on bail and it is for the concerned Magistrate to consider whether the petitioner can be released on bail or not and even if he is released on bail, in view of above statement, he will not enter Amraiwadi area of Ahmedabad city upto 30th November, 2004.

7) In view of what is stated above, this petition is allowed. The order of detention dated 24-02-2004 is quashed and set aside. The detenu, Dipakbhai Bhikhabhai Patil is ordered to be set at liberty forthwith, if he is not required in connection with any other case. Rule is made absolute.

(P.B.Majmudar,J.)

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